

for PCP facilities on the 152.480 frequency in Huntington and Charleston, WV.

RAM provides interference-free service on the shared 152.480 frequency to over 7000 paging units held by thousands of subscribers. RAM has invested over \$1 million in constructing, operating and maintaining that service for its subscribers. To date, co-channel licensees have cooperated with each other to avoid harmful co-channel interference on the subject frequency. If Capitol is licensed on the 152.480 frequency and does not act accordingly, and unrefuted record facts show that it will not, RAM's customers will begin to suffer from harmful co-channel interference, and RAM's substantial investment will be harmed. Moreover, if Capitol's application is granted on the 152.480 MHz frequency, RAM may be unable to meet its current and projected customer needs on that frequency without experiencing harmful co-channel interference. This economic injury of a direct, tangible, and substantial nature affords RAM standing as a party in interest in this licensing proceeding. Federal Communications Commission v. Sanders Bros. Radio Station, 309 U.S. 470 (1940).

II. Relief Requested.

For reasons explained herein, in light of recent changed circumstances, RAM respectfully requests that the Commission return Capitol's application to the frequency coordinator, NABER, to obtain an updated coordination study to determine if Capitol could now be assigned the virtually unused 157.740 frequency.

III. NABER May Reconsider its Frequency Recommendation Due to Changed Circumstances.

Consistent with established Commission procedure, the frequency coordinator may revise its frequency recommendation when changed circumstances after an application has been filed with the Commission are brought to the Commission's attention in a Petition for Reconsideration. See TPI Transmission Services, Inc., FCC #7110-23 (September 28, 1989) (attached hereto as Exhibit One). In this proceeding, the recent revision of the rules to allow 350 watt output power on the 157.740 frequency has significantly altered the factors that NABER should consider regarding Capitol's application. Also, increased usage on the 152.480 frequency since the date the application was filed has increased the potential for harmful interference on the 152.480 frequency. For these reasons, to be explained below, the Commission should ask NABER to update its frequency recommendation concerning Capitol's application.

A. The FCC Recently Made An Additional High Power Frequency Available to Capitol.

The Capitol Order stated that "152.480 MHz is the most desirable PCP frequency, and there is no reason to question Capitol's request for this frequency." (Capitol Order at 2). That statement is no longer correct due to recent Commission actions. For this reason, the Capitol Order should be reconsidered and NABER should be asked to update its frequency recommendation.

On July 9, 1990, the FCC amended its rules to "increase permitted output power on 157.740 MHz to 350 watts." Amendment of

Part 90, FCC Mimeo 90-253 (July 9, 1990). Thus, the 157.740 frequency now has the same "high permissible power and propagation characteristics" as the 152.480 frequency.

According to NABER's computer-based records, not one private carrier is licensed on the 157.740 MHz frequency within 47 miles of Capitol's proposed service areas, whereas the 152.480 frequency has numerous licensed carriers (See Exhibit Two, attached hereto). Thus, since the 157.740 frequency is now equally "desirable" as 152.480, and since 157.740 is used by only a handful of individual users in the subject service areas, 157.740 would actually be a superior frequency for Capitol's use.

At the same time, the addition of another carrier to the 152.480 frequency will increase the likelihood of harmful interference to licensed systems and their subscribers. Since Capitol could not logically object to operating on the less congested, high power 157.740 frequency, NABER should update its frequency recommendation to coordinate Capitol on the 157.740 frequency.

Commission-designated frequency coordinators have an "obligation ... to assist in resolving post-licensing conflicts arising from their frequency recommendations." Frequency Coordination in the Private Land Mobile Service, 4 FCC Rcd. 6325, 6326 (1989). A reconsideration of NABER's frequency recommendation in light of relevant changed circumstances would be consistent with NABER's obligation to assist in resolving post-licensing conflicts. At this writing, Capitol has not caused harmful interference on the

152.480 MHz frequency; nevertheless, by updating its frequency recommendation, NABER could easily protect thousands of subscribers from any potential "post-licensing conflict."

Now that an additional high power frequency is unused and available to Capitol, it simply makes no sense to risk interference to thousands of subscribers on the 152.480 frequency. NABER has been apprised of this Petition for Reconsideration and has indicated that, as it has in prior instances, it would readily provide the Commission with an updated frequency recommendation at the FCC's request.

B. Less Airtime is Now Available on 152.480.

The Capitol Order held that the Commission would not "weigh" air traffic studies against an applicant's "adequate showing" since such studies are "inherently subjective." This finding should be reconsidered.

The FCC's rules require shared frequency coordinators to consider "all factors which may serve to mitigate potential interference." 47 C.F.R. § 90.175(a). Since potential interference increases as available airtime decreases, NABER appropriately considered RAM's air traffic studies prior to sending Capitol's frequency recommendation to the Commission. At that time, the 152.480 frequency was "loaded" to more than 91% capacity at the busy hour.

On July 26, 1990, RAM filed its "Supplement to Petition to Deny" to provide the Commission with current evidence of airtime

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availability on the 152.480 frequency. The monitoring study attached thereto showed that airtime traffic had increased to over 98% at the busy hour. That evidence is an important factor for NABER to consider in updating its frequency recommendation.

Despite language in the Capitol Order to the contrary, the Commission has previously encouraged the use of air traffic studies in shared frequency situations. Only last year the FCC said: "Monitoring is now used by some applicants to help select the best available frequency. To the extent that monitoring can improve the frequency selection process and thereby improve overall spectrum efficiency, we encourage applicants to use it." Frequency Coordination in the Private Land Mobile Service, 4 FCC Rcd. 6325, 6338 n.28 (emphasis added).

It would be "spectrally inefficient" to increase traffic congestion on the 152.480 frequency while a comparable frequency is available and underutilized in the same service area. Thus, due to increased congestion on the 152.480 frequency and the availability of a superior frequency, NABER should be asked to update its frequency recommendation to determine if Capitol should be licensed on the 157.740 frequency.

**IV. The FCC is Responsible for Protecting
Shared Frequency Licensees & Their Subscribers
From Harmful Electrical Interference.**

Capitol has no right to be licensed on the 152.480 frequency if by so doing the Commission must increase the likelihood of harmful interference to subscribers currently using that frequency.

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It was settled long ago in Journal Company v. Federal Radio Commission, 48 F.2d 461, 463 (D.C. Cir. 1931) that "where a broadcasting station has been constructed and maintained in good faith, it is in the interests of the public and the common justice to the owner of the station that its status should not be injuriously affected, except for compelling reasons." Id. (emphasis added). The Commission there was required to rescind its decision to increase the power of a co-channel station, thereby mitigating the possibility of harmful electrical interference to the existing licensee. Id. at 464.

The D.C. Circuit Court of Appeals thus laid the foundation for Commission licensing decisions in the public interest: "No station that has been operated in good faith should be subjected to a change of frequency or to a reduction of its normal and established service area, except for compelling reasons." Id. at 463.

That court succinctly explained why the Commission was created in the first place: "The purpose of this regulation obviously is to prevent chaos and to insure satisfactory service" particularly since the "installation and maintenance" of radio stations "involve a very considerable expense." Id.

No one disputes the fact that RAM and the co-channel licensees on the 152.480 frequency have operated their stations "in good faith" and at "considerable expense" to provide more than "satisfactory service" to thousands of subscribers. Though a PCP frequency is not exclusive, no legitimate reason has been advanced to explain why thousands of PCP users should be denied FCC

protection from harmful electrical interference. To the contrary, decades of caselaw compel the conclusion that PCP licensees and subscribers are entitled to FCC protection to the fullest extent possible under the Act.

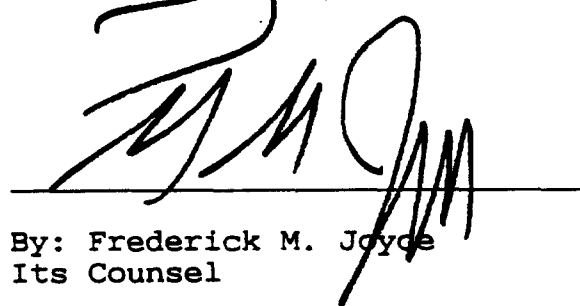
Because of changed circumstances in this proceeding, the Commission can easily provide interference protection to thousands of subscribers on 152.480 systems in the subject service areas simply by exercising its licensing authority: the Commission should ask NABER to update its frequency recommendation to determine if Capitol can be coordinated on the high power 157.740 frequency.

CONCLUSION

WHEREFORE, for all the foregoing reasons, RAM Technologies respectfully requests that the Commission notify NABER of the changed circumstances in this proceeding, and request an updated frequency recommendation consistent with this Petition.

Respectfully submitted,

RAM TECHNOLOGIES, Inc.

A handwritten signature in black ink, appearing to read 'F. M. Joyce', is written over a horizontal line. The signature is stylized and cursive.

By: Frederick M. Joyce
Its Counsel

JOYCE & JACOBS
2300 M Street, N.W.
Eighth Floor
Washington, D.C. 20037

Date: August 28, 1990

(202) 457-0100

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Federal Communications Commission

Gettysburg, PA 17325

SEP 23 1989

In Reply Refer To:

7110-23

Sheldon L. Stept
National Association of Business and
Educational Radio, Inc. (NABER)
Suite 200
1501 Duke Street
Alexandria, VA 22314

Dear Mr. Stept:

This letter is in regard to a petition for reconsideration dated September 7, 1989 received by the Commission from Marjorie J. Giller of Lukas, McGowan, Nace & Gutierrez on behalf of TPI Transmission Services, Inc. (TPI) (see attached copy).

TPI's application file number 8906161348 was received by the Commission on June 6, 1989 requesting licensure on frequency 152.480 MHz in Caparra Heights, PR. Attached to this application filing was a letter and a frequency coordination sheet from NABER recommending their use of frequency 157.740 MHz. On July 19, 1989 the Commission granted TPI's request for frequency 152.480 MHz under call sign WNPW518. After further review of their application, the Commission recognized an administrative processing error in granting this station and set aside the grant on frequency 152.480 MHz and returned the application to pending status. TPI's application was subsequently granted on August 10, 1989 on frequency 157.740 MHz in accordance with NABER's recommendation.

Several changes have taken place since TPI's filing with NABER. Two of the changes referenced are the August 7, 1989 Commission dismissal of Grace Consultant Services' application (file number 161343), and the July 25, 1989 return of Beeper Express' application (file number 161349). Both of these applications had been recommended use of frequency 152.480 MHz by NABER.

In light of the changes that have taken place, we request that you supply the Commission with an updated frequency coordination recommendation for applicant within 20 days. If you cannot recommend frequency 152.480 MHz for TPI's use, please explain in detail.

Sincerely,



Terry L. Fishel
Chief, Land Mobile Branch

Attachment

cc: Marjorie J. Giller
Lukas, McGowan, Nace & Gutierrez

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8/24/90
10:15:29

CO-CHANNEL USER LISTING

EXHBIT TWO, p. 1

Page: 1

Frequency - 157.74000

Latitude - 38:20:59

Longitude - 81:37:58

Radius - 50.00 Miles

CHARLESTON, WV
Requested By -

Coord - D_V02

Control Number -

Part 90.173 of the FCC's rules and regulations states that unless specifically provided for in the rules, frequencies are allocated on a SHARED basis only and will NOT be assigned for the exclusive use of any licensee. This listing contains licensees and approved NABER coordinations and is for informational purposes only. It is based on NABER's data base which is based, in part, on information made available from the FCC. These records may contain errors, omissions or inaccuracies. NABER will not be responsible for any loss or damage you sustain which is caused by omissions, errors or inaccuracies in the FCC's data base or in the NABER data base.

Co-Channel Users

CONTROL #	UNITS	CLASS	NAME	LATITUDE	LONGITUDE	M	ANT	ELEV	ERP	DIS	CALL SIGN	TRANS	CITY	ST
880060009	1	FBS	PAGING UNLIMITED	37:45:52	81:11:52		96	2545	235	47	WNL1400		BECKLEY	WV
864854746	1	FB	BECKLEY HOSPITAL INC	37:45:55	81:10:55		95	2350		47	KJUS91		BECKLEY	WV
864864528	1	FB	UNION CARBIDE COMMUNICATIONS	38:22:00	81:41:30	0	163	603		3	KVF262		SOUTH CHARLEST	WV
901870087	1	FB	UNION CARBIDE COMMUNICATIONS	38:22:05	81:41:31	N	163	603	144	3			SOUTH CHARLEST	WV
864244505	1	FB	IBM RESEARCH AND DEVELOPMENT	38:23:38	82:29:10		120	934	177	46	KCH698		HUNTINGTON	WV

Total # of Records: 5

000010

8/24/90
10:15:11

Page:

CO-CHANNEL USER LISTING EXHIBIT TWO, p.2

Frequency - 157.74000

Latitude - 38:25:09

Longitude - 82:26:43

Radius - 50.00 Miles

Requested By - HUNTINGTON, WV

Coord - D_V02

Control Number -

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Co-Channel Users

CONTROL #	UNITS	CLASS	NAME	LATITUDE	LONGITUDE	M	ANT	ELEV	ERP	DIS	CALL SIGN	TRANS	CITY	S
880810014	1	FB	HUMANA INC	38:09:32	82:39:53		130	1020	120	22	KIE806		LOUISA	
864864528	1	FB	UNION CARBIDE COMMUNICATIONS	38:22:00	81:41:30	D	163	603		41	KVF262		SOUTH CHARLEST	
901870087	1	FB	UNION CARBIDE COMMUNICATIONS	38:22:05	81:41:31	N	163	603	144	41			SOUTH CHARLEST	
864244505	1	FB	IBM RESEARCH AND DEVELOPMENT	38:23:38	82:29:10		120	934	177	3	KCH698		HUNTINGTON	
865134793	1	FB	ARMCO STEEL COMPANY LP	38:26:39	82:39:32		172	860		12	WQU957		ASHLAND	
865164572	1	FB	FRANKLIN T GERLACH ATTORNEY	38:44:48	82:59:27		40	560		37	WUJ551		PORTSMOUTH	

Total # of Records: 6

000011

8/24/90
0:14:44

CO-CHANNEL USER LISTING

EXHIBIT TWO, p.3

Page: 1

frequency - 152.48000 Latitude - 38:25:09 Longitude - 82:26:43 Radius - 50.00 Miles
HUNTINGTON, WV
requested By - Coord - D_V02 Control Number -

Part 90.173 of the FCC's rules and regulations states that unless specifically provided for in the rules, frequencies are allocated on a SHARED basis only and will NOT be assigned for the exclusive use of any licensee. This listing contains licensees and approved NABER coordinations and is for informational purposes only. It is based on NABER's data base which is based, in part, on information made available from the FCC. These records may contain errors, omissions or inaccuracies. NABER will not be responsible for any loss or damage you sustain which is caused by omissions, errors or inaccuracies in the FCC's data base or in the NABER data base.

Co-Channel Users

CONTROL #	UNITS	CLASS	NAME	LATITUDE	LONGITUDE	M	ANT	ELEV	ERP	DIS	CALL SIGN	TRANS	CITY	ST
00230169	1	FB6C	RAM - PAGE	37:48:58	82:48:05		150	1373	1400	46	WJUN621		PRESTONSBURG	KY
01640046	1	FB6C	RAM-PAGE	37:48:58	82:48:05		150	1373	1400	46			PRESTONSBURG	KY
01640045	1	FB6C	RAM PAGE	37:51:21	81:58:20		80	1980	1400	47			LOGAN	WV
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:11:17	81:35:53		150	1775	2300	49	WJUN930		NEAR CHARLESTO	WV
80760051	1	FB6C	T & T COMMUNICATIONS	38:17:46	81:37:32		150	1140	1409	45			CHARLESTON	WV
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:19:47	81:39:36		148	1100	2300	43	WJUN930		CHARLESTON	WV
00230169	1	FB6C	RAM - PAGE	38:22:32	81:39:26		120	1020	1400	43	WJUN621		CHARLESTON	WV
93520214	1	FB6C	CAPITOL PAGING	38:22:36	81:42:09		115	940	350	40			CHARLESTON	WV
00230169	1	FB6C	RAM - PAGE	38:23:11	81:50:28		100	1000	1400	33	WJUN621		SAINT ALBANS	WV
93520214	1	FB6C	CAPITOL PAGING	38:23:28	82:29:10		65	934	350	3			HUNTINGTON	WV
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:24:15	81:53:46		200	1000	2200	30	WJUN930		NEAR ST ALBANS	WV
80760051	1	FB6C	T & T COMMUNICATIONS	38:25:27	82:32:04		170	930	1409	5			BURLINGTON	OH
00230169	1	FB6C	RAM - PAGE	38:25:27	82:32:04		270	930	1400	5	WJUN621		BURLINGTON	OH
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:31:22	82:14:06		200	1010	2200	13	WJUN930		NEAR LESAGE	WV
00300127	1	FB6C	RAM-PAGE	38:39:05	82:58:28		200	1025	1400	33	WJUN776		SOUTH PORTSMOU	KY
00230169	1	FB6C	RAM - PAGE	38:44:49	82:58:13		303	780	1400	36	WJUN621		PORTSMOUTH	OH
00300127	1	FB6C	RAM-PAGE	38:48:19	82:13:36		200	820	1400	29	WJUN776		GALLIPOLIAS	OH
00300127	1	FB6C	RAM-PAGE	38:59:50	82:38:39		140	890	1400	41	WJUN776		JACKSON	OH

otal # of Records: 18

000012

8/24/90
0:15:52

CO-CHANNEL USER LISTING

EXHIBIT TWO, p.4

Frequency - 152.48000

Latitude - 38:20:59

Longitude - 81:37:58

Radius - 50.00 Miles

CHARLESTON, WV
Requested By -

Coord - 0_V02

Control Number -

Part 90.173 of the FCC's rules and regulations states that unless specifically provided for in the rules, frequencies are allocated on a SHARED basis only and will NOT be assigned for the exclusive use of any licensee. This listing contains licensees and approved NABER coordinations and is for informational purposes only. It is based on NABER's data base which is based, in part, on information made available from the FCC. These records may contain errors, omissions or inaccuracies. NABER will not be responsible for any loss or damage you sustain which is caused by omissions, errors or inaccuracies in the FCC's data base or in the NABER data base.

Co-Channel Users

CONTROL #	UNITS	CLASS	NAME	LATITUDE	LONGITUDE	M	ANT	ELEV	ERP	DIS	CALL SIGN	TRANS	CITY	ST
80760051	1	FB6C	T & T COMMUNICATIONS	37:47:07	81:31:11		100	3520	1409	39			BECKLEY	WV
65094139	1	FB	RAM COMMUNICATIONS INC	37:47:09	81:31:14		80	3520	650	39	WNCX732		BECKLEY	WV
00300127	1	FB6C	RAM-PAGE	37:47:10	81:31:08		120	3530	1400	39	WNCV776		KOPPERSTON	WV
01640046	1	FB6C	RAM PAGE	37:51:21	81:58:20		80	1980	1400	39			LOGAN	WV
80260151	1	FB6C	COMMUNICATION SERVICE INC	37:55:38	80:58:15		100	3369	2500	46	WNLH930		LAYLAND	WV
82920059	1	FB6	TWO WAY RADIO INCORPORATED	37:55:39	80:58:16		60	3950	310	46	WNPZ514		LAYLAND	WV
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:11:17	81:35:53		150	1775	2300	11	WNLH930		NEAR CHARLESTON	WV
80760051	1	FB6C	T & T COMMUNICATIONS	38:17:46	81:37:32		150	1140	1409	4			CHARLESTON	WV
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:19:47	81:39:36		148	1100	2300	2	WNLH930		CHARLESTON	WV
00230169	1	FB6C	RAM - PAGE	38:22:32	81:39:26		120	1020	1400	2	WNLH621		CHARLESTON	WV
93520214	1	FB6C	CAPITOL PAGING	38:22:36	81:42:09		115	940	350	4			CHARLESTON	WV
00230169	1	FB6C	RAM - PAGE	38:23:11	81:50:28		100	1000	1400	12	WNLH621		SAINT ALBANS	WV
93520214	1	FB6C	CAPITOL PAGING	38:23:28	82:29:10		65	934	350	46			HUNTINGTON	WV
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:24:15	81:53:46		200	1000	2200	15	WNLH930		NEAR ST ALBANS	WV
80760051	1	FB6C	T & T COMMUNICATIONS	38:25:27	82:32:04		170	930	1409	49			BURLINGTON	OH
00230169	1	FB6C	RAM - PAGE	38:25:27	82:32:04		270	930	1400	49	WNLH621		BURLINGTON	OH
80260151	1	FB6C	COMMUNICATION SERVICE INC	38:31:22	82:14:06		200	1010	2200	35	WNLH930		NEAR LESAGE	WV
81660089	1	FB6C	TRANSCOM COMMUNICATIONS	38:37:48	80:51:12		120	1125	1500	46	WNLH923		FRANETOWN	WV
00300127	1	FB6C	RAM-PAGE	38:48:19	82:13:36		200	820	1400	45	WNCV776		GALLIPOLIAS	OH

Total # of Records: 19

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CERTIFICATE OF SERVICE

I, Frederick M. Joyce, do hereby certify that on this 28th day of August, 1990, copies of the foregoing Petition for Reconsideration were mailed, postage prepaid, to the following:

Ralph Haller, Chief
Private Radio Bureau
Federal Communications Comm.
2025 M Street, NW, Room 5002
Washington, D.C. 20554

Jay Kitchen, President
National Association of
Business & Educational Radio
1501 Duke Street, Suite 200
Alexandria, VA 22314

Richard J. Shiben, Chief
Land Mobile & Microwave Division
Private Radio Bureau
Federal Communications Comm.
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

Terry L. Fishel, Chief
Land Mobile Branch
Private Radio Bureau
Federal Communications Comm.
Gettysburg, PA 17326

Kenneth E. Hardman, Esq.
2033 M Street, N.W.
Suite 400
Washington, D.C. 20036



Frederick M. Joyce

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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re:

Application of Capitol Radio-
telephone Co., Inc. for 152.48
MHz Private Carrier Paging
facilities, Huntington/Charleston,
West Virginia

)
)
)
) File No. 0190207
)
)
)

To: Chief, Land Mobile & Microwave Division

MOTION FOR STAY OF APPLICATION

RAM Technologies, Inc. (RAM), through its attorneys, and pursuant to Section 1.102(b)(2) of the Commission's Rules, 47 C.F.R. § 1.102(b)(2), hereby moves the Private Radio Bureau's Land Mobile & Microwave Division for an order staying any action with respect to the above-referenced application, pending the Federal Communications Commission's consideration of RAM's accompanying Petition for Reconsideration. For reasons herein stated, RAM respectfully submits that a grant of this Motion would be in the public interest.

Discussion

The public interest warrants a stay of any action on the subject application until the FCC has had an opportunity to review the accompanying Petition for Reconsideration. As was the case in Arizona Mobile Telephone Company, 66 F.C.C.2d 691 (1977), a stay order here would be "a proper means of maintaining the status quo pending final action on the petition[]" Id. at 695 (footnote omitted).

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Federal Communications Commission

Docket No. 93-231 Exhibit No. Cap 08

Presented by Capital

FEB 02 1994

Disposition { Identified _____
Received ✓ 2/4/94
Rejected _____

Reporter C. W. W. W.

Date **FEB 02 1994**

This request can be granted under the Virginia Petroleum Jobbers Association v. F.P.C., 259 F.2d 921 (D.C. Cir. 1958) four-part test in that: (1) RAM's petition is likely to prevail on the merits; (2) RAM's PCP service and its customers will be irreparably harmed should the stay be denied; (3) no harm will result to other interested parties if the stay is granted; and (4) the public interest warrants that a stay be granted.

1. RAM's Petition Should Prevail on the Merits.

RAM's petition contends that the FCC and the appropriate frequency coordinator have continuing obligations to protect licensed radio stations and their customers from real or potential harmful interference. Moreover, RAM submits that due to recent FCC rule amendments, the circumstances have changed so that the FCC can grant Capitol a license on a high power, 157.740 PCP frequency, while protecting licensed 152.480 systems from harmful electrical interference. Thus, under present circumstances, it would be simply arbitrary, capricious and contrary to the requirements of the Communications Act of 1934 to grant Capitol's application on the 152.480 frequency.

2. RAM and its Subscribers will Suffer Irreparable Harm if Capitol's Application is Granted.

RAM and its thousands of subscribers will be harmed irreparably if Capitol is given the opportunity to cause harmful interference on the 152.480 MHz frequency. RAM provides essential

paging services to doctors, lawyers, sales and trades people, among many others, throughout its Tri-State wide-area system. These subscribers receive interference-free service on demand because of careful engineering by the incumbent co-channel licensees.

Record evidence strongly suggests that the moment Capitol begins operating on the 152.480 MHz frequency, harmful interference will occur, subscribers will begin to miss important pages, and RAM will lose customers and revenues. That damage will be irreparable; it is of absolutely no consolation that the incumbent licensees may complain to the Commission after the fact if Capitol, intentionally or otherwise, causes harmful interference on the 152.480 frequency.

RAM's system is carefully coordinated with all other co-channel licensees to avoid harmful co-channel interference. RAM built its system from the ground up in technical coordination with these co-channel licensees. Now that the frequency is becoming heavily loaded with users, coordination between the co-channel licensees is most critical.

The risk to the doctors, lawyers, plumbers, laborers, and thousands more who use the 152.48 MHz frequency if this application is not stayed is simply too great. Once the interference commences, neither Capitol nor the Commission will be able to make these parties "whole" for the harm caused. Thus, a stay should be granted pending review of RAM's Petition.

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3. No Harm to Other Interested Parties.

Probably the only interested party that would object to a stay in this proceeding would be Capitol. However, Capitol is already licensed to operate on numerous RCC frequencies throughout West Virginia. Moreover, there are many other Part 22 and Part 90 paging frequencies currently available in Capitol's service areas. Finally, it is unlikely that Capitol would be harmed by any stay of the processing of its application. Under the circumstances, a stay of the processing of that application, which is bound to protect thousands of subscribers, will cause no harm to Capitol.

4. A Stay Will be in the Public's Interest.

The overriding purpose of a stay is to protect the public interest from injury or destruction while remedies are being pursued. The Evening Star Broadcasting Company et al., 68 FCC 2d 158,163 (1978). There could be no clearer comparison of the interests at stake than this: the imminent threat of service outages to thousands of professionals and laborers throughout RAM's service areas, versus the inchoate needs of an applicant that already holds FCC license authorizations. It is respectfully submitted that the balance of interests in this case clearly weighs toward protecting current subscribers. The stay will enable the FCC to review RAM's petition, marshall all the facts, and then determine if NABER could update its frequency recommendation to grant Capitol's application on the 157.740 frequency in the public interest.

CONCLUSION

WHEREFORE, the foregoing premises considered, it is respectfully submitted that a grant of this Motion for Stay of Application will be in the public interest, and that the Private Radio Bureau should stay its licensing decision in this matter until all interested parties are given notice and an opportunity to respond to RAM's Petition, and until such time as the FCC can take appropriate actions consistent with that petition.

Respectfully submitted,
RAM TECHNOLOGIES, Inc.



By: Frederick M. Joyce
Its Counsel

JOYCE & JACOBS
2300 M Street, N.W.
Eighth Floor
Washington, D.C. 20037
(202) 457-0100

Date: August 28, 1990

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CERTIFICATE OF SERVICE

I, Frederick M. Joyce, Esq., do hereby certify that on this 28th day of August, 1990, copies of the foregoing Motion for Stay of Application were mailed, postage prepaid, to the following:

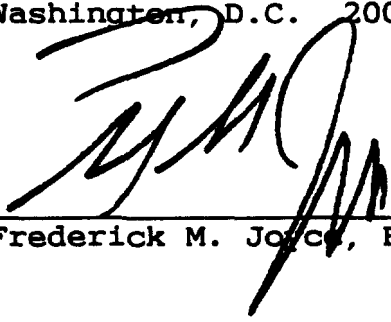
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ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:)
)
Application of Capitol Radio-)
telephone Company, Inc., t/a)
Capitol Paging for 152.480 MHz)
Private Carrier Paging) File No. 0190207
facilities, Huntington/Charleston, WV)

To: Chief, Land Mobile & Microwave Division

**REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION**

RAM Technologies, Inc., through its attorneys, and pursuant to Section 1.106(h) of the Commission's Rules, 47 C.F.R. § 1.106(h), hereby replies to Capitol Radiotelephone Company's Opposition to Petition for Reconsideration.

**I. Capitol's Intentions are Obviously
Harmful to the Public Interest.**

Capitol's Opposition telegraphs its true intentions with respect to its pending application: as RAM has contended from the outset, Capitol's intent is not to obtain "the most desirable PCP frequency," but to disrupt and interfere with service to RAM's subscribers. If Capitol's intentions were otherwise, it would have leapt at the opportunity to be licensed on the virtually unused 157.740 frequency. The Commission could not fairly read the facts in this case and reach any other conclusion.

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Federal Communications Commission

Docket No. 93-231 Exhibit No. Cap 09

Presented by Cap. Fred

Identified

SEP 02 1994

Disposition

Received

✓ 2/4/94

Rejected

Reporter

SEP 02 1994

C. Culbreth

Once the Commission amended the output power rules, 157.740 should have become the preferred frequency for Capitol: with 350 watts output power, and with no other carriers using that frequency in Capitol's proposed service areas, 157.740 would obviously be more "desirable" than 152.480. Cf. Capitol Order at 2 (the Commission stated that, at that time, the "152.480 MHz frequency [wa]s the most desirable frequency, and there is no reason to question Capitol's request for this frequency."). Thus, if Capitol were truly a "good faith" applicant, it would gladly have chosen to terminate this proceeding by providing service on the 157.740 frequency.

Instead, Capitol has opposed RAM's reasonable request to have NABER "take another look" at its frequency recommendation, and has chosen to continue fighting for the less desirable 152.480 frequency, without any rational explanation. Under the circumstances, only one conclusion can be reached: Capitol is prosecuting its application only because it intends to cause harmful interference to current 152.480 subscribers.

RAM's initial opposition to Capitol's application presented the Commission with sworn evidence of Capitol's plans to intentionally "busy-up" the 152.480 frequency with harmful intent. Capitol never refuted those allegations, nevertheless, the Commission speculated that the evidence only showed that Capitol intended to "aggressively market its PCP service by acquiring used pagers and offering discount service." Capitol Order at 1. That interpretation of Capitol's actions can no longer withstand serious

scrutiny.

Capitol's continued insistence on using the 152.480 frequency is, if truly in good faith, not "aggressive," it is witless, self-destructive, and defiant of the Commission's rules. Under Section 90.173(b) of the Rules, Capitol and RAM are required to "cooperate in the selection and use of frequencies to reduce interference and make the most effective use of the authorized facilities." 47 C.F.R. § 90.173 (b) (emphasis added). By ignoring this obligation, instead obstinately pursuing the congested 152.480 frequency, Capitol is only ensuring an increase in co-channel interference on the 152.480 frequency, which would be detrimental to both carriers' subscribers.

Surely the FCC has no statutory obligation to continue to defend Capitol's actions when to do so defies common sense, and serves only to increase the likelihood of harmful interference on a shared frequency. To the contrary, the "use of any frequency at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest" 47 C.F.R. § 90.173(b). Since Capitol appears unwilling to "cooperate" to reach a just solution in the public interest, it is incumbent upon the FCC to make the only rational, reasoned decision presented by the facts: Capitol's application should be returned to NABER for coordination on the virtually unused, high-power 157.740 MHz frequency.

II. Interference-Avoidance is the Central Issue.

Capitol contends that the "core" issue in this proceeding is RAM's "attemp[t] ... to transmogrify [sic.] a shared frequency into a protected frequency" (Capitol Opposition at 2). On the contrary, RAM already shares the 152.480 frequency with three other licensees using proper channel sharing procedures. RAM obviously knows that the 152.480 frequency is not "exclusive." RAM vehemently argues, however, that shared frequency or not, the FCC is statutorily bound to take adequate measures to protect shared frequency subscribers from harmful interference when an applicant such as Capitol refuses to do so voluntarily. (RAM Petition for Reconsideration at 6-8).

Unfortunately, Capitol may be correct in noting that the FCC has helped frame this proceeding as a "shared use vs. exclusive use" debate, though the type of frequency involved is obviously not open to dispute. See Capitol Order at 2. Rather, the central issue in this proceeding is how the FCC will keep Capitol from causing harmful interference to RAM's subscribers. Though Capitol would argue to the contrary, it is inconceivable that the FCC's statutory duty to protect licensees and their subscribers from harmful interference ends once it is determined that "merely" a shared frequency is at stake.

The Commission created PCP service for the express purpose of providing users the "benefit [of] having several paging service options available to satisfy their individualized service needs" Paging Operations, 91 FCC 2d 1214, 1222. Having granted